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# PUBLIC UTILITY CONDEMNATION CASES IN THE STATE OF WASHINGTON

By Henry L. Gray, M. ASCE

ENGINEERING ECONOMICS DIVISION

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PAPERS

# PUBLIC UTILITY CONDEMNATION CASES IN THE STATE OF WASHINGTON

By Henry L. Gray,[1] M. ASCE

## Synopsis

No instructions or suggestions as to methods will be found in this paper, which is devoted entirely to certain special uses for valuation data, and to an attempted analysis of the results. A simple narration of the problems entailed in the condemnation cases in the State of Washington is the purpose of this paper. It must not be taken as a brief in favor of public ownership, or against it; but as an argument for the improvement of engineering techniques in this field and for a more objective participation by engineers. This paper was presented at the 1948 ASCE Annual Convention at Seattle, Wash., and has been brought up to date as of December 1, 1949.

## Enabling Legislation

In the State of Washington there is a very definite and formidable plan for the public ownership of light and power utilities. An appreciable part of the plan already has been completed. The plan originated with the State Grange, which sponsored a measure known as Initiative Number One, which was adopted by popular vote at the general election of November 4, 1930. The initiated measure was sent to, and passed by, the 1931 Legislature[2] as an act authorizing:

> "* * * the establishment of Public Utility Districts for the purpose of conserving the water and power resources of the State of Washington for the benefit of the people, and to supply public utility service, including water and electricity for all purposes."

Throughout the campaign, the measure was commonly known as "the public power bill." For quite a while after its passage, the possibility of water service was overlooked; but presently several public utility districts began to

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Note.—Written comments are invited for publication; the last discussion should be submitted by July 1, 1950.

[1] Cons. Engr., Seattle, Wash.

[2] "Remington's Revised Statutes of Washington," Vol. 11, Chapter 3, Title 84, Sections 11605 and 11616, Olympia, Wash., 1931.

provide water service. In this paper, "public utility districts" and "districts" have the same meaning, and the terms are used interchangeably.

## Public Utility Districts

The act provides for the creation of public utility districts, and for the election of boards of three commissioners, which are given broad powers. Light and power and water systems can be constructed, purchased, or acquired through condemnation; revenue bonds can be issued in any amount; general obligation bonds up to 1.5% of the assessed valuation can be issued; taxes up to 2 mills can be levied annually—all possible without a vote of the people. The only authority required for the construction or acquisition of a property is a resolution of the board, which must recite the program, describe the property to be built or acquired, state the probable cost, outline the plan of financing, and specify the type of security to be sold. With a few minor exceptions, all the financing has been with revenue bonds, which in most instances have had a ready sale at low rates of interest. (General obligations in excess of 1.5% of the assessed valuation require a popular vote.) A public utility district can acquire property outside its borders—even in another county. Thus far, the business of public utility districts has been limited to light and power service and domestic water service; but it is generally believed that they can engage in irrigation, although none has gone into that field.

The property of public utility districts is not on the tax rolls. In lieu of general property taxes, the districts pay the following percentages of their annual gross electric revenues: (1) 5% from sales of energy generated in plants owned by the district; and (2) 2% from sales of purchased energy. There is no corresponding tax on gross revenues of district-owned water systems. In common with all other utility business in the state, public utility districts pay state excise taxes of 3% on gross sales of electricity and water. The total light and power taxes paid by such districts, therefore, will range from 5% to 8% of their gross revenues—considerably less than the taxes paid by private light and power companies. Federal income taxes account for most of the difference.

Following the passage of the legislative act, the public utility district program was principally one of organization. Nothing much was done about acquiring properties until the late nineteen thirties. At that time there were about twenty private companies, large and small, engaged in the light and power business in the state. When the campaign of acquisition got under way, the public utility districts bought out twelve of those companies, and condemned two others; so that only six private light and power companies remain in business in the State of Washington today. Three of those are quite small. The three large companies remaining together served thirty-four of the thirty-nine counties of the state; but they have been subjected to repeated condemnation proceedings instituted by the public utility districts, and have lost fifteen counties to the districts—ten through condemnations, and five through negotiated sales. There are sixteen city-owned light and power systems in the state, which cannot be condemned.

There are thirty-nine counties in the State of Washington. There are thirty public utility districts in twenty-nine counties—one county has two districts. With that exception, the districts are coextensive with the counties. Of the thirty public utility districts, seven have no utilities. One district has a water system only. Twenty-two districts are in the light and power business and, in some instances, also have water systems. Of the twenty-two districts, seven have some generating facilities; but the greater part of the energy sold by the districts is purchased from the Bonneville Power Administration. These twenty-two districts have instituted sixteen condemnation suits. In addition, three other districts went through condemnation proceedings but did not accept the awards. To date, there have been nineteen condemnation cases carried through by public utility districts, all involving light and power properties. Thirteen different properties in ten counties were taken through condemnation, and eight others were acquired through negotations stemming from possible condemnation suits. There were six cases in which the districts did not accept the awards; but, later, three of the properties involved were purchased by the respective districts. These condemnation suits are the subject of this paper.

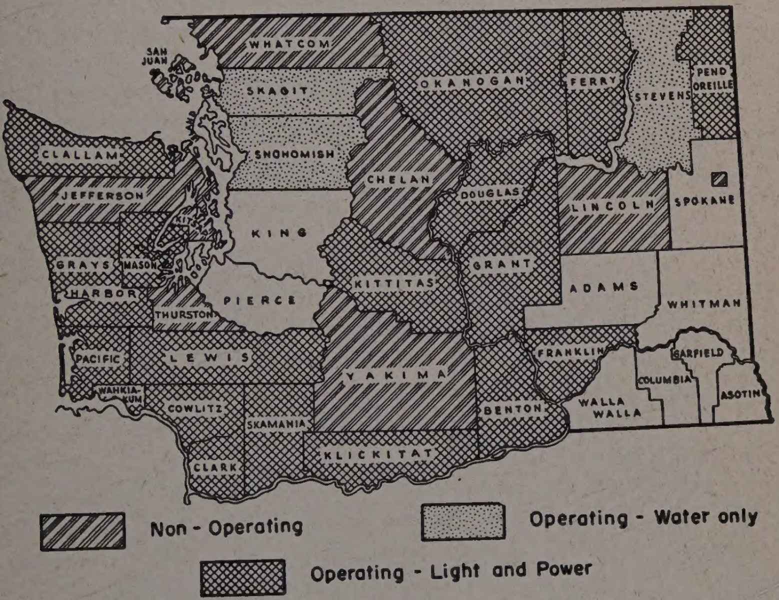

FIG. 1.—PUBLIC UTILITY DISTRICTS IN THE STATE OF WASHINGTON

## ELEMENTS OF VALUE

The counties that contain districts are shown in Fig. 1. Mason County has two districts, both operating.

The various elements of value and final value claimed by each petitioner (district) and by each respondent (company), in each of the nineteen cases, together with the awards, and other data are listed in Table 1. The abbreviations in Col. 2 signify the following companies:

| Abbreviation | Full name |
|---|---|
| WGE | Washington Gas and Electric Company |
| PSP | Puget Sound Power and Light Company |
| NWE | Northwestern Electric Company |
| PPL | Pacific Power and Light Company |
| WWP | Washington Water Power Company |
| PGE | Portland General Electric Company |

Of the nineteen court proceedings, two were heard by the same judge, who fixed the awards. In the remaining seventeen proceedings, the verdicts, or awards, were fixed by juries. In the nineteen proceedings, nine were heard in United States District Courts, and ten were heard in the Superior Court which is the local court of the State of Washington. In cases 3 and 4, Table 1 (the two cases heard before a Superior Court judge), the awards were low in comparison with most of the jury awards. As the attorneys and courts became familiar with such matters, the length of the hearings was reduced materially. These condemnations became a kind of business, and frequently the same men—lawyers, engineers, and economists—would appear in different cases. The attorney who handled case 1, Table 1, for the company was in a number of the later cases. Another attorney handled the greater number of cases for the districts.

TABLE 1.—STATISTICS RELATING TO CONDEMNATION C

| Reference | Public utility district No. 1 of the county of: (1) | versus Private company[a] (2) | Court[b] U. S. District (3) | Court[b] State Superior (4) | Case opened (5) | Verdict Date (6) | Verdict Dollars (7) | Actual cost of investment in property (8) | Reproduction Cost New Condition District (9) | Reproduction Cost New Condition Company (10) | Le Dist (1 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Cowlitz | WGE | ✓ | | 2/ 4/40 | 4/19/40 | $6,011,506 | .... | $5,721,994[c] | $6,482,975 | $3,59 |
| 2 | Whatcom | PSP | ✓ | | 5/12/40 | 8/10/40 | 5,000,000 | .... | 4,387,180[c] | 5,356,711 | 2,66 |
| 3 | Skamania | NWE | | ✓[b] | 1/26/42 | 1/31/42 | 68,000 | 170,936 | 100,051 | 102,608 | 66 |
| 4 | Skamania | PPL | | ✓[b] | 1/26/42 | 1/31/42 | 32,000 | 64,418 | 42,937 | 42,503 | 2 |
| 5 | Lewis | PSP | ✓ | | 4/ 6/42 | 5/10/42 | 2,100,000 | .... | 2,231,219[c] | 2,604,278 | 1,36 |
| 6 | Thurston | PSP | ✓ | | 4/ 6/42 | 5/10/42 | 4,400,000 | .... | 3,598,349[c] | 4,195,251 | 2,50 |
| 7 | Cowlitz | PSP | ✓ | | 4/ 6/42 | 5/10/42 | 1,100,000 | .... | 1,250,435[c] | 1,437,060 | 76 |
| 8 | Okanogan | WWP | | ✓ | 11/ 5/42 | 1/ 2/43 | 2,227,531 | .... | 2,674,411[c] | 3,056,267 | 1,88 |
| 9 | Douglas | WWP | | ✓ | 11/ 5/42 | 1/ 2/43 | 139,165 | .... | 166,689[c] | 186,293 | 10 |
| 10 | Snohomish | PSP | ✓ | | 2/ 2/43 | 3/19/43 | 9,500,000 | .... | 5,968,111[c] | 7,437,869 | 3,63 |
| 11 | Clallam | PSP | | ✓ | 11/15/43 | 12/ 1/43 | 600,000 | 445,851 | 718,214 | 814,495 | 44 |
| 12 | Grant | WWP | | ✓ | 11/13/44 | 12/ 8/44 | 546,985 | 509,737 | 595,985 | 691,630 | 42 |
| 13 | Clark | PGE | ✓ | | 10/ 8/45 | 10/17/45 | 801,000 | 706,419 | 978,960 | 1,225,045 | 72 |
| 14 | Benton | PPL | ✓ | | 6/18/46 | 6/29/46 | 1,265,000 | 622,825 | 844,560 | 1,227,432[c] | 56 |
| 15 | Cowlitz | NWE | | ✓ | 8/12/46 | 8/20/46 | 493,215 | 279,110 | 429,546 | 600,754 | 28 |
| 16 | Klickitat | PPL | ✓ | | 11/12/46 | 11/21/46 | 670.070 | 477,582 | 669,016 | 881,714 | 46 |
| 17 | Franklin | PPL | | ✓ | 5/12/47 | 5/22/47 | 1,200,000 | 421,405 | 651,614 | 830,850 | 46 |
| 18 | Clark | PPL | | ✓ | 11/12/47 | 11/25/47 | 4,837,500 | 3,476,997 | 5,701,306 | 6,905,640 | 3,747 |
| 19 | Stevens | WWP | | ✓ | 5/24/48 | 6/11/48 | 2,500,000 | 1,002,033 | 1,765,574 | 2,640,603 | 89 |

[a] Symbolic names for brevity; for full title of company, see text. [b] All cases decided by jury, except cases 3

*Reproduction Costs.*—In each proceeding, the usual elements of value were presented. Actual cost of construction (when it could be ascertained) was introduced, generally by the districts. Each side presented estimates of reproduction cost new; and in the past few years it has not been easy to keep the reproduction cost estimates abreast of current material prices and wage scales. The matter of deliveries received no consideration, as it was assumed that materials could be obtained. In cases involving much property, it was the tendency of the engineers preparing the estimates of reproduction cost for the districts to consider that all material would be furnished by the owner, but would be put in place by a contractor who would furnish all labor and construction equipment. Although this was a departure from methods frequently used, it was justified by the fact that several local light and power concerns were doing a substantial part of their expansion work precisely that way. In the reproduction cost estimates prepared for the power companies, the labor construction overhead, including contractor's profit, generally ranged from 40% to 50% of the cost of labor. In such estimates, the cost of labor was from 28% to 35% of the total cost of labor and material.

In estimating reproduction costs, all prices used were spot; and frequently there was an agreement on the inventory, and on the land values; but nearly

volving Public Utilities in the State of Washington

| iation | Going Value | | Operating revenue, last twelve months | Mean Market Value | | Mean Admitted Severance Damages | | Total, Cols. 16 Plus 18 and 17 Plus 19 | | Reference |
|---|---|---|---|---|---|---|---|---|---|---|
| mpany (12) | District (13) | Company (14) | (15) | District (16) | Company (17) | District (18) | Company (19) | District (20) | Company (21) | |
| 77,365[c] | $347,500[c] | $615,502[c] | $ 976,108 | $3,778,333 | $7,400,000 | .... | .... | $3,778,333 | $7,400,000 | 1 |
| 22,246 | 262,000[c] | 600,000 | 1,089,214 | 2,867,000 | 5,033,333 | $118,687 | $2,100,000 | 2,985,687 | 7,133,333 | 2 |
| 77,648 | .... | .... | 21,898 | 51,000 | 95,000 | 1,272 | 5,507 | 52,272 | 100,507 | 3 |
| 32,939 | .... | .... | 13,341 | 25,500 | 40,000 | 710 | 1,608 | 26,210 | 41,608 | 4 |
| 25,774 | .... | 210,000 | 330,927 | 1,100,000 | 2,033,333 | 40,667 | 566,667 | 1,140,667 | 2,600,000 | 5 |
| 46,544 | 340,175[c] | 450,000 | 750,691 | 2,606,667 | 4,667,778 | 157,500 | 1,544,444 | 2,764,167 | 6,212,222 | 6 |
| 85,331 | 105,004[c] | 150,000 | 245,767 | 820,000 | 1,455,555 | 21,333 | 466,667 | 841,333 | 1,922,222 | 7 |
| 51,531 | .... | 420,000 | 396,524 | 1,100,000 | 3,750,000 | 29,004 | 1,000,000 | 1,129,004 | 4,750,000 | 8 |
| 58,442 | .... | 30,000 | 31,495 | 53,333 | 265,000 | 775 | 93,333 | 54,108 | 358,333 | 9 |
| 16,514 | .... | .... | 1,828,518 | 3,850,000 | 9,083,333 | 65,000 | 3,583,333 | 3,915,000 | 12,666,667 | 10 |
| 55,469 | .... | 80,000 | 220,437 | 402,500 | 883,233 | 10,000 | 275,000 | 412,500 | 1,158,233 | 11 |
| 08,994 | .... | 110,000 | 125,248 | 392,500 | 812,500 | 10,000 | 200,000 | 402,500 | 1,012,500 | 12 |
| 99,924 | .... | .... | 457,490 | 682,500 | 1,225,000 | 39,500 | 250,000 | 722,000 | 1,475,000 | 13 |
| 32,282[c] | .... | .... | 304,049 | 537,500 | 1,375,000 | 27,500 | 350,000 | 565,000 | 1,725,000 | 14 |
| 21,573 | .... | .... | 100,998 | 312,500 | 625,000 | 12,250 | 97,500 | 324,750 | 722,500 | 15 |
| 96,202 | .... | .... | 168,169 | 465,000 | 850,000 | 14,000 | 124,000 | 479,000 | 974,000 | 16 |
| 46,361 | .... | .... | 294,249 | 625,000 | 1,212,500 | 31,500 | 317,500 | 656,500 | 1,530,000 | 17 |
| 49,805 | .... | .... | 1,308,539 | 3,350,000 | 7,125,000 | 50,033 | 698,750 | 3,400,033 | 7,823,750 | 18 |
| 41,446 | .... | .... | 287,656 | 777,500 | 2,200,000 | 6,400 | 328,333 | 783,900 | 2,528,333 | 19 |

ich were decided by judge. [c] The mean of two or more.

always there was a substantial difference in the estimates of the two sets of engineers, which was accounted for principally by the assumed performances of work crews. After the end of price control, following World War II, there was considerable variation in material prices as used.

The reproduction cost estimates were then reduced by deducting accrued depreciation, which was arrived at by various methods, such as inspection, mortality tables, and efficiency tests. After the valuation experts completed their work, the carefully prepared reproduction costs and depreciation studies were buried beneath an avalanche of opinions as to final value. These details were very necessary and involved much work; but, in the end, they disappeared from sight.

One law firm engaged on these cases had a low opinion of reproduction cost estimates, and considered them of doubtful value. Apparently the decision of the United States Supreme Court in the Hope Natural Gas Case (320 U.S. 591)[3] gave considerable support to actual cost as the prime element of value. Although there is a decided tendency for regulatory bodies to favor actual cost as the rate base, it does not play much of a part in sales or condemnations. In the nineteen cases in Table 1, actual cost was given in eleven cases.

*Engineering Estimates.*—Engineers may have "lost caste" in this handling of valuation problems, because of the wide differences in engineering estimates. In the nineteen cases in Table 1, the aggregate reproduction cost new, as estimated by the engineers representing the companies was about 20% in excess of the aggregate estimate made by the engineers for the districts. This is a substantial difference where inventories are practically the same. In these nineteen cases, all the estimates of reproduction cost new, introduced by the districts, were made by local engineers who also took the inventories, were intimately familiar with field conditions, and spent much time on the job. The reproduction costs prepared for the companies were made by engineers from other parts of the United States, who generally had not spent much time on the job; and, invariably, their estimates were based on inventories taken by someone else. Although the writer implies no criticism of nonresident engineers, he wishes to sound a note of warning to all engineers. Since about 1938 engineers have lost much ground to the accountants and the economists. It cannot be regained when engineers are unable to agree among themselves on simple construction details and costs. Naturally, differences are to be expected, and some allowances must be made for excessive zeal, or bias, and for occasional incompetence; but there is nevertheless room for improvement in engineering cost estimates.

*Going Value.*—In the cases cited (Table 1, Cols. 13 and 14) "going value" appeared from time to time. In this field of estimating, engineers also are weak. Nothing exists more definitely than that factor called "going value" and yet engineers have been unable to devise a rational method for fixing its dimensions. In Table 1, there were thirteen claims for going value; and not a single logical suggestion was advanced for determining it. Most of the claims represented the opinions of the witnesses, and had no basis. Not the slightest attention was paid to any such claims. Unless engineers can develop some method of arriving at the proper amount of going value, they should stop talking about it.

*Gross Revenue.*—In Table 1, Col. 15 gives "operating revenue, last twelve months." This is "gross revenue" for the most recent 12-month period available. There were practically no disputes about this item, although some companies that had paid so-called "customer dividends" by forgiving one month's bill contended that the forgiven bills should be included as revenue. Revenue is a very important element. Any purchaser of utility shares will want to know first how much do they pay in dividends—that is, how much do they earn? The stock purchaser does not attempt to arrive at reproduction cost per share, or at similar valuation details. He does not have any such data. He is concerned principally with earnings; they fix the value to the investor. Unfortunately, in the nineteen cases of Table 1, there were disagreements as to net earnings—because of disagreements as to the proper methods of arriving at the cost of power and of properly apportioning federal income taxes. If there had been agreement on net earnings, some real information might have become available.

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[3] *Public Utilities Reports*, New Series, Vol. 51, 1944, p. 193.

*Market Value.*—In the nineteen cases, there were approximately sixty-five different estimates of market value. The testimony of the market value experts (most of whom were engineers) literally filled hundreds of pages of transcript. In every case, with every witness, the technique was exactly the same. The witness would begin by giving the standard legal definition of market value; then he would mention the various elements of value assembled by his side to which he had given consideration; and then he would wander from a field of Chamber of Commerce statistics into a realm of conjecture; and, finally when everyone in the court had begun to doze, he would give his estimate of market value, which was his opinion, based on his study of the facts. To the writer, these constant performances were tiresome—they must have been even more so to the witnesses. Each side would have two or more market value witnesses; and, although the market value estimates introduced by the districts differed widely from those introduced by the companies, there was a definite "meeting of minds" among the witnesses for any one side. The entire market value show was depressing, and yet it is typical of what happens all over the United States in every valuation case. Surely, engineers can do better than that.

Purposely, of course, the writer is severe. Witnesses are not free to speak their minds. They must work with the lawyers who, in turn, must consider the client. As the subject is controversial, naturally the lawyers want to give their client "a break." Value cannot be determined by formula, and engineers cannot put in too much argumentative testimony; but it seems to the writer that they might at least explain their mental processes in an attractive manner. Unhappily, they are "stymied" on one particularly important point—capitalizing net earnings. Public utility rates that produce the earnings are subject to regulation; therefore the capitalization of net earnings is not conclusive.

## ANALYSIS OF COURT RECORDS

In the condemnation cases in the State of Washington, a district is not obliged to accept the award. This would seem unfair to the companies, but actually it is not. The companies do not want to lose their properties; and, if the award is such that the deal can be financed, the districts will take over.

By paying the amount of the award to the court, a district can take over even with an appeal pending. This procedure was not always permitted.

In thirteen of the nineteen condemnation cases listed, the districts accepted the awards, arranged a financing, took possession of the properties, and generally are doing quite well. In five cases, the properties were not taken over. In one instance, case 2, Table 1, the award of the jury was reasonable enough; but the company appealed and the final verdict was delayed. Condemnation awards bear interest until paid or finally disposed of. In case 2, the interest accumulation was large, and the district could not secure the kind of financing it wanted and finally dropped the matter. Then came World War II, and the earnings of the property increased substantially—so that the deal would have been advantageous for the district—but by that time it was too late.

Cases 5, 6, and 7, Table 1, were consolidated in court, with the understanding that all verdicts must be accepted or rejected by all three districts. Later, it was found that, in case 5, the verdict was too high for financing; hence all three verdicts were rejected. In cases 10 and 19, the awards were too high to permit financing.

TABLE 2.—APPRAISAL OF CONDEMNATION CASES IN TERMS OF COURT AWARDS (COLUMN NUMBERS IN HEADINGS REFER TO TABLE 1)

| Case No. (see Table 1) | VERDICT (COL. 7) DIVIDED BY THE SUM OF MEAN MARKET VALUE AND ADMITTED MEAN SEVERANCE DAMAGES (COLS. 20 AND 21) | | | Verdict (Col. 7) divided by operating revenue (Col. 15) | VERDICT (COL. 7) DIVIDED BY REPRODUCTION COST (COLS. 9 AND 10) | | |
|---|---|---|---|---|---|---|---|
| | District (1) | Company (2) | Mean (3) | (4) | District (5) | Company (6) | Mean (7) |
| 1 | 1.59 | 0.81 | 1.08 | 6.16 | 1.05 | 0.93 | 0.99 |
| 2 | 1.67 | 0.70 | 0.99 | 4.59 | 1.14 | 0.93 | 1.03 |
| 3 | 1.30 | 0.68 | 0.89 | 3.11 | 0.68 | 0.66 | 0.67 |
| 4 | 1.22 | 0.77 | 0.94 | 2.40 | 0.75 | 0.75 | 0.75 |
| 5 | 1.84 | 0.81 | 1.12 | 6.35 | 0.94 | 0.81 | 0.87 |
| 6 | 1.59 | 0.71 | 0.98 | 5.86 | 1.22 | 1.05 | 1.13 |
| 7 | 1.31 | 0.57 | 0.80 | 4.48 | 0.88 | 0.77 | 0.82 |
| 8 | 1.97 | 0.47 | 0.76 | 5.62 | 0.83 | 0.73 | 0.78 |
| 9 | 2.57 | 0.39 | 0.67 | 4.42 | 0.83 | 0.75 | 0.79 |
| 10 | 2.43 | 0.75 | 1.15 | 5.20 | 1.59 | 1.28 | 1.42 |
| 11 | 1.45 | 0.52 | 0.76 | 2.72 | 0.84 | 0.74 | 0.78 |
| 12 | 1.36 | 0.54 | 0.85 | 4.37 | 0.92 | 0.74 | 0.85 |
| 13 | 1.11 | 0.54 | 0.73 | 1.75 | 0.82 | 0.65 | 0.73 |
| 14 | 2.24 | 0.73 | 1.10 | 4.16 | 1.50 | 1.03 | 1.16 |
| 15 | 1.52 | 0.68 | 0.94 | 4.88 | 1.15 | 0.82 | 0.96 |
| 16 | 1.40 | 0.69 | 0.92 | 3.98 | 1.00 | 0.76 | 0.86 |
| 17 | 1.83 | 0.78 | 1.10 | 4.08 | 1.84 | 1.44 | 1.62 |
| 18 | 1.42 | 0.62 | 0.86 | 3.70 | 0.85 | 0.70 | 0.77 |
| 19 | 3.19 | 0.99 | 1.51 | 8.69 | 1.42 | 0.95 | 1.13 |
| Average.... | (1.74) | (0.67) | (0.96) | (4.55) | (1.07) | (0.87) | (0.95) |

In Table 2, the evidence is resolved in terms of the awards. Presumably, the jury would listen to the testimony, weigh the various claims, and arrive at a market value. The jury, presumably, would find the amount of severance damages and add that to market value; and the sum would be the award. This procedure is a customary one. The results may be examined by comparing the award in each case with the sum of market value and admitted severance damages claimed by each side as in Cols. 1, 2, and 3, Table 2. The word "admitted" is used to modify "severance damages" because some witnesses refused to admit that there would be severance damages, and their estimate of severance damages was zero. The "mean" used is the mean of amounts greater than zero. Table 2 shows that the awards ranged from 111% to 319% of the sums of the amounts for market value and severance damages claimed by the witnesses for the districts, and from 39% to 99% of the corresponding amounts claimed by the witnesses for the companies. For the nineteen cases, the straight average percentage, based on district claims, was 174%; and, when based on company claims, the straight average was only 67%.

Table 2 also shows, for each case, the corresponding percentages based on the means of the claims—that is, market value plus severance damages—made by the districts and the companies. In the nineteen cases, the awards ranged from 67% to 151% of the mean claim, the straight average percentage being 96%. This result looks something like a split difference—but it is a coincidence. In the individual cases, such a division just was not made.

*Operating Revenues.*—As previously stated, there was an agreement on "operating revenues" (which are gross earnings) but the various claims for "net operating revenues" were far apart, the difference being due to disagreements as to the cost of power and as to the consequent differences in federal income taxes. The awards ranged from 1.75 to 8.69 times the operating revenues, the straight average being 4.55. However, eighteen of the nineteen awards presumably contained some provision for severance damages, which have no connection with revenues. It is probable that, eliminating severance damages, the average multiplier would be about 4. Although there would have been no immediate change in operating revenues due to the proposed change of ownership, there would have been an immediate increase in net operating revenues of about 25%, due principally to the elimination of federal income taxes and other taxes which the districts would not pay. There was testimony to that effect, and presumably it was considered in connection with market value—but the matter was not given much prominence.

On public utility condemnation cases, most of the engineering work goes into the estimate of reproduction cost new, and the estimate of accrued depreciation. It is difficult to compare these elements of value with the awards—which presumably (except in case 1) contain some provision for severance damages. Table 2 (Cols. 5, 6, and 7) shows the relationships between the awards and the corresponding estimates of reproduction cost new. It also shows that the awards ranged from 68% to 184% of the reproduction costs of the district, with a straight average of 107%. There was a corresponding range of from 66% to 144% in the reproduction costs claimed by the companies, with a straight average of 87%. Taking the straight average of the percentages obtained by dividing the awards by the district and company estimates, it was found that the average percentage was 95.

It does not seem worthwhile to make comparisons with the respective reproduction cost less depreciation estimates, except to state that in every instance the award was in excess of the reproduction cost less depreciation; and generally it was considerably in excess.

In nine cases, estimates of "going value" were given (Cols. 13 and 14, Table 1). In all those cases, the companies claimed going value, whereas the engineers for the public utility districts declared "going value" in five instances only. No one denied the existence of going value, but it was difficult to determine; so, generally, it was absorbed in "market value," which presumably is purely a matter of judgment.

*Severance Damages.*—The item of "severance damages" was the subject of much debate. Case 1 was a detached property, taken in its entirety, and there were no severance damages; but, in all other cases, severance damages were claimed and presumably were included in the awards. In cases 3 and 4, which were decided by a Superior Court judge, the inclusions for severance damages were definitely stated—as 7.35% of the total award in case 3 and as 6.25% in case 4. These cases involved very small properties, which were not detached. After the close of a case, it sometimes is possible to talk with jurors and discover what the jury considered proper for severance damages. This was done in six cases (cases 10 to 16), and the known inclusions for severance damages, compared with cases 3 and 4, were as shown in Table 3. In the remaining eleven cases, the sums allowed for severance damages are unknown.

TABLE 3.—COMPARISON OF JURY ALLOWANCES FOR SEVERANCE DAMAGES

| Case | Total award | Severance damages | Percentage |
|---|---|---|---|
| 3 | $ 68,000 | $ 5,000 | 7.35 |
| 4 | 32,000 | 2,000 | 6.25 |
| 10 | 9,500,000 | 2,000,000 | 21.05 |
| 11 | 600,000 | 10,000 | 1.67 |
| 13 | 801,000 | 54,000 | 6.74 |
| 14 | 1,265,000 | 165,000 | 13.04 |
| 16 | 670,070 | 15,000 | 2.24 |
| 18 | 4,837,500 | 120,000 | 2.48 |

Severance damage generally was defined about as follows: "A reduction in the value of the property not to be taken, caused by the severance of the property being taken." The calculations, however, introduced other features. According to one witness who appeared for the companies in a number of cases, severance damages are made up of three elements:

1. Physical severance, or the cost of binding together the physical property remaining after severance;
2. Operating severance, or that part of the operating and general expense chargeable to the property taken, which would continue after severance; and
3. General severance, or the reduction in value of the remaining property caused by severance.

The witnesses for the districts generally would admit the legitimacy of items 1 and 2, although in smaller amounts than those claimed by the companies; but in no instance did a witness for a district admit item 3 or general severance.

Item 1, or physical severance, is clear. It is the cost of rearranging the remaining property after the severance of a part of the original whole. Item 2 covers the cost of carrying those members of the company who were employed on the part severed, and who would remain with the organization after severance; and it also includes that part of the company general expense ordinarily charged against the severed part, which expense would continue. The general scheme adopted by both sides was: (*a*) To estimate the total annual amount of item 2; (*b*) to fix a readjustment period (generally 3 years) after which all such expense would be redistributed, and would then become properly chargeable to the operations of the remaining property; and (*c*) to provide some plan for gradually redistributing such expenses during the readjustment period. Until such expenses could be redistributed, they would be of the nature of unnecessary expense, and would make up item 2.

There was only one affirmative argument for item 3, which ran something like this:

> (*a*) When a number of disconnected small operating units are consolidated into one large integrated property, the operation becomes more efficient, with consequent operating economies and other advantages; hence the value of the integrated property is greater than the sum of the individual values of the several operating units of which it is composed; and
>
> (*b*) When any one operating unit is severed from a consolidated property, there is a loss in value to the remaining property greater than the value of the unit severed.

The argument was all conversation—no demonstrations were offered. Somehow, it seemed to the writer that something more might have been done.

*Jury Reaction.*—Like everyone else, jurors are impressionable. A well-prepared and capably presented case is certain to have a favorable effect; however, juries are unpredictable. In the courts of the State of Washington, ten of the twelve jurors can decide a civil case, whereas the federal courts require the verdict to be reached by all jurors. In the nineteen cases cited, there were fourteen juries. (Certain cases were consolidated.) It is difficult to compare a group of twelve people with society as a whole; and the writer did not see all the juries. Most of those that he saw were representative, but one was definitely below par; and later it developed that at least two members of that jury were strongly prejudiced against the company, and were unwilling to make a fair award—yet the award was reasonably fair. The verdict was a result of the fact that two other members of the jury were determined to get an adequate award, and were "smart" enough to get it. Exactly the reverse might happen, and sometimes does.

Case 13, Table 1, is an example. The property was very desirable, notwithstanding a competitive situation. The company and the district were friendly, and the company unquestionably would have sold to the district had it not been tied up with another company in a gentleman's agreement not to sell. The utmost good feeling prevailed throughout the inventory and appraisal work. The writer is reasonably certain that the district would have been willing to pay at least $1,250,000 for the property. Definitely, the district wanted the company to get a fair price. The jury was above the average, and the presiding judge was capable and fair. The company claimed

$1,475,000; and the district admitted $722,000. Four times the gross revenue was $1,829,960—yet the award was only $801,000!

Exactly the reverse happened in case 19, Table 1. The company put up a stiff fight. The district was well represented, its lawyer having acted in case 13 and other cases. Unquestionably the district's case was well handled. The company claimed an award (market value plus severance damages) of a mean sum of $2,528,333. The district admitted a corresponding mean sum of only $783,900. Four times the gross revenue was $1,150,624. The award of the jury was $2,500,000!

In the jury room, all kinds of things happen. The jury just does not "spit at a crack" or split the difference, as is commonly supposed. Any jury may contain partisans who will fight for their preference; and sometimes they win. That possibility must be taken into account.

## CONCLUSIONS

The foregoing evidence derived from practice leads to five broad conclusions as follows:

1. In fixing awards, juries are likely to be more liberal than judges. This is contrary to the popular idea.
2. With jury cases, as far as the award is concerned, it makes little difference whether the case is in a federal district court or in a local state court.
3. The range of awards may be expected to be from 75% to 115% of the mean of the final claims of the opposing sides.
4. The part of an award that concerns market value, excluding severance damages, may be expected to run from three to six times the current gross revenue. In a number of cases, the average multiplier probably will be about four.
5. The amount of severance damages in an award will depend on the particular conditions, and is difficult to predict; however, it may be expected to range from 2% to 7% of the total award. It is not so important as is commonly supposed.

The question naturally arises: Would it not have been better to have purchased outright than to have condemned? Early in the game, the districts started to purchase outright, and bought a number of properties. There are three large companies remaining. Two of them show no inclination to sell piecemeal; but the largest company recently sold its properties in eight counties, at reasonably good prices, even though it was practically forced to sell. It still operates in ten counties.

Another question arises: How have the awards compared with what an engineer might have fixed as a fair purchase price, plus some allowance for severance? Some of the awards have been high, and some have been low. As an average, the awards have been less than the sums that a willing buyer, wanting the property, would have paid.

In condemnation cases, there is considerable expense for preparation and trial. In two cases known to the writer, the awards were $1,265,000 and $1,200,000. In each case, the total district expense was approximately $60,000, or 5% of the awards. In very small cases, with awards of approximately $100,000, district expense might run as much as 15%. On fairly large cases, with awards of about $5,000,000, the expense probably would run around 3%. Even after adding these expenses, it may be concluded that, in general, the districts fared better than the companies.

These valuation and condemnation cases require far more engineering talent than is commonly supposed. Sometimes they lead to other work; engineers representing the districts frequently continue as consultants. The future for this kind of work is difficult to predict; but there may be considerable opportunity, and it behooves the profession to give this field some thought.

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